

# EXHIBIT D

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

FEDERAL TRADE COMMISSION,  
Plaintiff,

v.

MICROSOFT CORP.,  
and  
ACTIVISION BLIZZARD, INC.  
Defendants.

Case No. 3:23-cv-02880-JSC

**DECLARATION OF DAVID SMUTNY**

Judge: Hon. Jacqueline Scott Corley

**DECLARATION OF DAVID SMUTNY**

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2 1. My name is David Smutny. The statements herein are true and within my personal  
3 knowledge unless stated otherwise.

4 2. I make this declaration to demonstrate why I should be permitted to receive and  
5 review all Confidential Material described in the Protective Order. It is essential that I be provided  
6 access to this information in order to use my knowledge of the company to assist outside counsel  
7 in formulating a defense in this action and to provide fully informed legal advice to the company.

8 3. I am an Assistant General Counsel in the Competition and Market Regulation Group  
9 at Microsoft Corp. ("Microsoft"). I am an attorney licensed to practice law in the District of  
10 Columbia. My primary role at Microsoft is to provide legal advice to the company on antitrust  
11 regulatory matters relating to mergers, acquisitions, joint ventures and other business investments.  
12 I am not involved in any competitive decision-making at Microsoft. I do not participate in any  
13 decisions about formulating or implementing strategies to compete in any markets or any decisions  
14 about content or product design, development, or pricing, nor do I make decisions concerning  
15 strategic partnerships.

16 4. This case arises out of the proposed acquisition of Activision Blizzard, Inc.  
17 ("Activision") by Microsoft (the "Proposed Transaction"). After the parties signed their merger  
18 agreement, they submitted notification of the transaction to the Federal Trade Commission (the  
19 "Commission" or "FTC"). Thereafter, the Commission issued a request for additional documents  
20 and information, initiating a lengthy investigative phase of the Proposed Transaction. Subsequently,  
21 the Commission commenced an administrative action challenging the Proposed Transaction which  
22 resulted in the production of more documents and information. Additionally, the Proposed  
23 Transaction resulted in regulatory review abroad by a number of jurisdictions including the  
24 European Commission (the "EC") and the United Kingdom's Competition and Markets Authority  
25 (the "CMA"), both of which initiated independent administrative actions.

26 5. I am an in-house attorney who was involved in the collection and preparation of  
27 information in response to the Commission's requests and advised the company during the  
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1 Commission's investigation and subsequent administrative action. Additionally, I was involved in  
2 the collection and preparation of information in response to the EC and CMA's requests, and also  
3 advised the company during the EC and CMA's administrative actions. I was involved in the  
4 preparation of Microsoft's employees for investigational and administrative hearings by the FTC,  
5 EC, and CMA and attended certain of the investigational and administrative hearings of Microsoft  
6 employees in my capacity as in-house counsel at Microsoft. Therefore, I am one of only a few  
7 individuals with the company who has comprehensive knowledge of the transaction, the  
8 competition issues, and the proceedings which have transpired to date with the Commission, as well  
9 as the other administrative actions related to the Proposed Transaction. I oversee the day-to-day  
10 management of this litigation and am deeply involved in all aspects of litigation strategy.

11 6. I plan to attend the Court hearing in this matter. It is essential that I be allowed  
12 access to all Confidential material in order to be an active member of the trial team, to direct our  
13 outside counsel, and to provide informed legal advice to the company. Because I understand the  
14 company, the industry, and the questions and concerns of Microsoft's leadership, I am more able  
15 than outside counsel to advise the company about the arguments being raised, the strength of the  
16 arguments, and the strength of the evidence in terms that the business executives can understand.  
17 Of course, in providing that advice, I would not disclose the confidential information itself.

18 7. I acknowledge and agree that I am subject to the jurisdiction of this Court and to its  
19 contempt powers. I agree to remain subject to the Court's jurisdiction at all times, including after  
20 this litigation is concluded.

21 8. I further represent that I will not make use of any Confidential material, directly or  
22 indirectly, for any purpose other than the defense of this action. I will abide by the terms and ethical  
23 obligations imposed by any protective order issued in this litigation.

1 I declare under penalty of perjury under the laws of the United States of America that the  
2 foregoing is true and correct.

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5 Executed on June 19, 2023, in San Francisco, CA.

6 By. /s/ David Smutny  
7 David Smutny  
8 Microsoft Corp.  
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**SIGNATURE ATTESTATION**

Pursuant to Civil Local Rule 5-1(h)(3), I attest under penalty of perjury that concurrence in the filing of this document has been obtained from any other signatory to this document.

Dated: June 19, 2023

/s/ Beth Wilkinson  
Beth Wilkinson

*Counsel for Defendant Microsoft Corp.*